IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1611 OF 2005

Sanjay Patel : Petitioner

V/s.

The Unit Trust of India & Ors. : Respondents

...

Mr.R. R. Bhonsale for the petitioner.
None present for the respondents.

....

CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE : MARCH 28, 2005.

P.C.:

1. By this petition, the petitioner challenges the order of dismissal dated 26.2.2002 and the appellate order dated 11.6.2002 passed by the Chairman, Unit Trust of India.

2. The petitioner was, inter alia, charged as follows:-

"(i) Knowingly committing acts of fraud by receiving 8 paid instruments having MICR No.18072 to 180879 amounting to a total of Rs.1,16,025/- from Rajkot Branch Office and thus committing acts which are prejudicial, detrimental and injurious to the interest of the Trust in breach of Rule 27 and Rule 29 of Unit Trust of India (Staff) Rules, 1978.

(ii) Knowingly committing acts of fraud and dishonestly encashing the said cheques amounting to Rs.1,16,025/- through his S.B. A/c. 13733 at Indian Overseas Bank, Ghatkopar Branch, Mumbai with a view to making wrongful gain to himself and consequent wrongful loss to the Trust and thus committing acts which are prejudicial, detrimental and injurious to the interest of the Trust in breach of Rule 27 and/or Rule 29 of Unit Trust of India (Staff) Rules, 1978.

(iii) Not returning the said amount of Rs.1,16,025/- fraudulently encashed by him directly to the Trust thus committing acts which are not conforming to the norms in breach of Rule 27 and Rule 29 of Unit Trust of India (Staff) Rules, 1978.

(iv) Not serving the Trust honestly and faithfully and committing acts which are prejudicial to the interest/reputation of the Trust and are unbecoming of an employee of the Trust in the matter of fraudulent encashment of cheques, in breach of Rule 29 of Unit Trust of India (Staff) Rules, 1978."

3. An inquiry was held into the charges. The petitioner was found guilty of fraud as charged and was dismissed by an order, dated 1.3.2002, of the competent authority under rule 55 of the Unit Trust of India (Staff) Rules, 1978. The petitioner appealed to the Board of Directors, hereinafter referred to as the "Board". The Board dismissed his appeal. Against the dismissal, the petitioner preferred Writ Petition No.2248 of 2003.

On 6.11.2003 this Court remitted the matter back to the appellate authority to decide the same on merits, in accordance with law. On 26.3.2004 the Board considered the application of the petitioner and rejected the same.

4. It appears that the petitioner has been found to have acted in concert with one Deepak Chhutani, who was working as Assistant Manager with the Unit Trust of India, hereinafter referred to as the "Trust", at Rajkot, and his confession is on record at exh.` K . Deepak Chhutani has clearly referred to the manner in which he misappropriated a part of the amount vide para 9 of his statement dated 7.3.2000 which reads as follows:-

> "In June, 1999 while printing ULIP Commission cheques, 8 instruments (H-MICR 180872 – 180879 amount Rs.116025) were misutilised and the utilization register was updated as utilized for commission. These were printed in the name of Sanjay C. Patel, Assistant Manager, UTI,

> Ghatkopar Branch Office (the petitioner). I gave him the Cheques stating that I had some units of US 64, which I transferred in his name and then repurchased the same. I told them that I had put a simple signature while transferring the units in their name and put the same signature on the reverse while repurchasing the same so the cheques were in their names."

5. The Inquiry Officer has clearly found vide para 7 of the report that the petitioner was aware of the fraud being committed by Deepak Chhutani. In short, the Inquiry Officer has gone into details and, on the basis of the evidence on record, come to the conclusion as follows:-

> "(e) The CSO encashed the cheques in June 1999 and refunded the money in Jan 2000 only (after a gap of 6 months), that too after the fraudulent encashment came to light. The amount of Rs.1,16,025/- received by the CSO was not by way of encashment/repurchase of any underlying units, since no such transfer or repurchase had ever taken place. In the above circumstances, the CSO was a party to the illegal action committed by Shri Deepak Chhutani and he cannot plead that he had encashed the cheques in good faith."

6. In appeal, the appellate authority has clearly upheld the finding of fraud. The appellate authority has upheld the finding that the petitioner accepted the fraudulently printed cheques without having any corresponding investment in the Trust, though eight paid instruments totalling to Rs.1,16,025/- which were fraudulently diverted in the petitioner's name. The appellate authority has also found that the petitioner was a party to an illegal arrangement by which he has knowingly consented

to his signatures to be forged by Deepak Chhutani . The appellate authority has rejected the petitioner's contention that he was unaware since he has spent years in the Trust and was well-versed with the functioning of the organisation. While doing so, the appellate authority is clearly of view that it is a well-established practice in the Trust that cheques below Rs.10 lakhs are not manually generated and the petitioner clearly consented to receiving the instruments totalling to an amount of Rs.1,16,025/-, even though they were manually generated.

7. There is thus clear and cogent evidence and good reason why the appeal has been dismissed. In the circumstances, we find no merit in the petitioner' scontention that the petitioner is innocent and, in fact, he himself instructed his Bankers to stop payment of cheques in the name of Deepak Chhutani and reported the matter to the Zonal Manager that he is innocent. The findings are based on the fact that the petitioner received and encashed the paid instruments in his name from Rajkot Branch office of the Trust without having any

corresponding investment. Needless to say that the petitioner was fully aware that he was dealing with public funds.

8. In the result, there is no merit in the petition which is hereby dismissed.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.